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May 10, 2006

**VIA EM/ECF AND HAND DELIVERY**

The Honorable Kent A. Jordan  
J. Caleb Boggs Federal Building  
844 N. King Street  
Room 6325  
Lockbox 10  
Wilmington, DE 19801

Re: Biovail v. Andrx Pharmaceuticals LLC et al., a Civil Action No. 1:05-cv-0586

Dear Judge Jordan:

The current dispute in this patent case, which will be heard by the Court on May 12 at 2:00 p.m., arises from the refusal to produce an inventor of the patent-in-suit, and circumstances that suggest plaintiff's counsel may have subsequently taken steps to interfere with that inventor's voluntary agreement to sit for a deposition.

The witness at issue is Phillip Baudier, one of the two named inventors on the patent-in-suit. Mr. Baudier is an employee or officer of a company called Galephar P.R., which was the initial assignee of the patent and subsequent licensor of the patent to plaintiff Biovail. While plaintiff's counsel have objected to discovery concerning the relationship between Biovail and Galephar, it is undisputed that plaintiff's counsel represents Galephar P.R. in responding to third party discovery in this action. Yet, plaintiff's/Galephar's counsel ultimately refused to make Mr. Baudier available for deposition either here in the U.S. or in Brussels, where Andrx has found through investigation that Mr. Baudier is presently located. Plaintiff's/Galephar's counsel delayed informing Andrx of this position until late in the case.

Shortly thereafter, counsel for Andrx (a) requested the original conference date of May 10, 2006, to discuss the issue, and (b) telephoned Mr. Baudier on April 19, 2006, and asked if he would voluntarily sit for a deposition in Brussels. Mr. Baudier agreed to sit for the deposition. Counsel for Andrx faxed a confirming letter to Mr. Baudier on the same day, and indicated to plaintiff's/Galephar's counsel that in light of Mr. Baudier's agreement to sit for the deposition, Andrx would not need to go forward with the conference on May 10, unless plaintiff's counsel interfered and caused Mr. Baudier to withdraw his consent.

In a second phone call with Andrx's counsel on April 26, 2006, Mr. Baudier confirmed his agreement to sit for deposition. Mr. Baudier requested a list of proposed dates. Counsel for Andrx proposed dates in letters dated April 26 and 27, 2006.

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It was known to all parties in this action that May 8, 2006 was the due date for Andrx to submit a letter to the Court if Andrx wished to proceed with the conference on May 10. On the morning of May 8, 2006, Andrx had no reason to believe Mr. Baudier would not appear for his deposition, as he previously had volunteered to do. Accordingly, Andrx released the May 10 conference date. Within a few hours after Andrx released the date, however, Mr. Baudier sent a fax to Andrx's counsel disavowing his agreement to appear for a deposition and claiming not to have understood what had been requested (and had been agreed to). The timing of this change in position appears to be more than coincidental – happening only hours after Andrx informed Biovail that the discovery conference would not be needed.

This would not be the first time that Biovail and Galephar have taken steps to avoid Mr. Baudier's being deposed by Andrx regarding the patent-in-suit. Mr. Baudier was not produced for deposition in a prior action brought by both Biovail and Galephar on the same patent against Andrx. Biovail and Galephar either refused or claimed to be unable to produce Mr. Baudier.

These events raise serious questions as to whether plaintiff's/Galephar's counsel, plaintiff Biovail and/or Galephar have interfered with or obstructed the discovery process.

Respectfully,

*/s/ Richard L. Horwitz*

Richard L. Horwitz

RLH:nmt/731588

cc: Clerk of Court  
Counsel of Record